

## MEMORANDUM

**DATE:** June 21, 2022

**TO:** Mayor Lankford & City Council

**VIA:** Mercy Rushing, City Manager

**FROM:** Cindy Karch, City Secretary *CK*

**SUBJECT:** Discuss and consider action on an agreement between Schaumburg & Polk, Inc (SPI) and the City of Mineola for Engineering for the Mineola Museum Project.  
**Council Meeting Agenda Item for July 25, 2022**

### **Background Information:**

City Council approved Schaumburg & Polk Inc. (SPI) for engineering for American Rescue Plan Act (ARPA) projects on April 11, 2022. I have attached the contract for your review and approval. SPI will be assisting us with all engineering projects related to ARPA funds, the main one being the Historical Museum. SPI has already begun preliminary work on this project. They've been out to look at the problem and have gotten copies of all of the building plans for the building.

### **Recommendation:**

It is recommended that council approve the contract.

### **Final Disposition:**

SHORT FORM OF AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES

THIS IS AN AGREEMENT effective as of \_\_\_\_\_  
("Effective Date") between

City of Mineola \_\_\_\_\_ ("Owner")

and

Schaumburg & Polk, Inc. \_\_\_\_\_ ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

2022 ARPA Upgrades \_\_\_\_\_ ("Project").

Engineer's Services under this Agreement are generally identified as follows:

Engineer's services are described in the attached two-page, "Specific Scope of Work" document dated June 2022. This proposal is Exhibit "A" to this Agreement and becomes a binding part of this Agreement.

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: 18 months
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding 6 months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

## 2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension. Payments will be credited first to interest and then to principal.

## 3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:
1. For cause,
    - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
    - b. By Engineer:
      - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
      - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for

herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.
  - B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
  - C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

#### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *General Considerations*

- A. This project utilizes funds distributed from the American Rescue Plan Act (ARPA), therefore all requirements presented in "Exhibit B" of this contract must be met by all parties.

- B. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- C. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- D. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- E. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.
- F. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- H. All documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by

Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.

- I. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- J. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- K. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

#### 6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Basis of Payment—Lump Sum*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:

Preliminary Design Phase - \$ 6,400.00 (Six Thousand Four Hundred)

Final Design Phase - \$ 9,500.00 (Nine Thousand Five Hundred)

Bidding Phase - \$5,600.00 (Eight Thousand Six Hundred)

Construction Administration – \$9,100.00 (Nine Thousand One Hundred)

**Total - \$30,600.00 (Thirty Thousand Six Hundred Dollars)**


- B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services actually completed during the billing period.

7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

Address for giving notices:  
City of Mineola  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ENGINEER:  
By:  \_\_\_\_\_  
Title: Executive Vice-President  
Date Signed: 7/14/22

Engineer License or Firm's Certificate  
Number: \_\_\_\_\_ F-000520  
State of: Texas

Address for giving notices:  
Schaumburg & Polk, Inc.  
320 S. Broadway Ave, Suite 200  
Tyler, TX 75702  
\_\_\_\_\_  
\_\_\_\_\_



**City of Mineola  
2022 ARPA Upgrades  
Specific Scope of Work - Exhibit A  
July 2022**

Items of work specified below shall be included as Exhibit A to the Form of Agreement between Owner and Engineer for Professional Services.

**General**

The project consists of design and permitting for upgrades to the existing historic museum sanitary sewer system and fencing upgrades to water system well locations.

**1. Preliminary Design**

- A. Field data collection for selected water system sites to be fenced.
- B. Initial site visit and coordination to obtain any available data such as as-builts or architectural plans of the museum building.
- C. Schematic design of fencing and gate systems for the well sites.
- D. Preliminary field review of internal and external sanitary sewer service to the museum building.
- E. Coordinate schematic design with any required regulatory agencies.
- F. Provide schematic layouts for fencing based on aerial mapping, lot layouts, and alignment.
- G. Prepare updated preliminary cost opinions and review with City.

**2. Final Design**

- A. Prepare final signed and sealed plans and specifications for museum upgrades anticipated as decommissioning basement-level sanitary sewer and installing a new sanitary sewer discharge pipeline to serve the above-ground floor requirements of the museum building.
- B. Recommend to Owner any further utility location effort in any areas of risk of conflict.
- C. Include consideration of alternate bids as recommended by Engineer or requested by City.
- D. Prepare final plans and specifications for fencing selected well sites including access gates and appurtenances.
- E. Submit final plans and specs to TCEQ, TxDOT and/or any other required regulatory review, and respond to questions or comments.
- F. Review final plans and specifications with City and revise as necessary to address any comments or questions.

3. Bidding/Quote Solicitation

- A. Provide contract documents and assist City in bidding or obtaining competitive quotes for the projects.
- B. If projects are anticipated to cost less than \$50,000 then quotes will be solicited. If over \$50,000 then bidding is required.
- C. Distribute advertisements directly to contractors to help advertise projects.
- D. Advertise in online plan rooms.
- E. Distribute Plans and Specs to responsive contractors.
- F. Conduct bid opening, evaluate and tabulate bids, and recommend award to City.

4. Construction

- A. Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including Progress Schedule, Schedule of Submittals, and Schedule of Values.
- B. As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment is necessary to enable Contractor to proceed.
- C. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe the progress and quality of the Contractor's executed Work. Scope is based on averaging 1.0 hr per week for an 8-week construction phase.
- D. Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the Contractor's work.
- E. Recommend and prepare Change Orders and Work Change Directives to Owner, as appropriate.
- F. Review and approve or take other appropriate action with respect to Shop Drawings and Samples and other data which Contractor is required to submit.
- G. Process pay applications from Contractor.
- H. Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor.
- I. Engineer shall assemble and provide a final set of as-built drawings based on Contractors field plan set, Engineer's working plan set, and the Resident Representatives field set of plans. These plans will be provided to the Owner in both paper and digital format.

**PROJECT DELIVERABLES**

- 1. 60% Design Phase Plans, Specifications, Budgets
- 2. Final Signed and Sealed Plans and Specifications
- 3. Contract Documents
- 4. Bidding Documents and Contracts
- 5. Recommendation of Award and Bid Assessments
- 6. Construction Record Drawings – including digital files



**RESPONSIBILITIES OF OWNER**

1. The Owner is responsible for any and all fees required for any permits and any bid advertising costs (newspaper fees, etc.).
2. This proposal excludes all actual costs of property or easement acquisition.
3. Cost to prepare or direct cost for, a USACE individual permit is not included in this proposal (not anticipated).

**END OF 3-PAGE EXHIBIT A**



**EXHIBIT B**  
**City of Mineola**  
**2022 ARPA Project**  
**July 2022**

Title VI of the Civil Rights Act of 1964

The sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.

Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

Age Discrimination Act of 1975.

The Contractor shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Americans with Disabilities Act

Contractor shall not discriminate against a qualified individual with a disability and shall comply with the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101 et seq. and any properly promulgated rules and regulations related thereto.

Conflicts of interest.

- (a) Governing Body. No member of the governing body of the City and no other officer, employee, or agent of the City, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of award between the Department of Treasury and the City, shall have any personal financial interest, direct or indirect, in the Contractor or this Contract; and the Firm shall take appropriate steps to assure compliance.
  
- (b) Other Local Public Officials. No other public official, who exercises any functions or responsibilities in connection with the planning and carrying out of administration,

construction, engineering or implementation of the ARPA award between the Department of Treasury and the City, shall have any personal financial interest, direct or indirect, in the Contractor or this Contract; and the Contractor shall take appropriate steps to assure compliance.

- (a) The Contractor and Employees. The Contractor warrants and represents that it has no conflict of interest associated with the ARPA award between the Department of Treasury and the City or this Contract. The Contractor further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the ARPA award between the Department of Treasury and the City or in any business, entity, organization or person that may benefit from the award. The Contractor further agrees that it will not employ an individual with a conflict of interest as described herein.

#### Access to Records

The U.S. Department of Treasury, Inspectors General, the Comptroller General of the United States, and the Texas Division of Emergency Management and the City, or any of their authorized representatives, shall have access to any documents, papers, or other records of the Contractor which are pertinent to the ARPA award, in order to make audits, examinations, excerpts, and transcripts and to closeout the City's ARPA contract with the Department of Treasury.

#### Retainage of Records

Grantees or subgrantees must retain all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

#### Termination for Cause [for Contracts > \$10K]

If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor pursuant to this Agreement shall, at the option of the City, be turned over to the City and become the property of the City. In the event of termination for cause, the Contractor shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of contract by the Contractor, and the City may set-off the damages it incurred as a result of the Contractor's breach of contract from any amounts it might otherwise owe the Contractor.

#### Termination for Convenience of the City/County.[for Contracts > \$10K]

City may at any time and for any reason terminate Contractor's services and work at City's convenience upon providing written notice to the Contractor specifying the extent of

termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.



**Appendix 1**

2022 SCHEDULE OF HOURLY RATES and EXPENSES

ADMINISTRATIVE ASSISTANT	\$70.00 /HOUR
SURVEY CREW	\$180.00 /HOUR
SURVEYOR I	\$60.00 /HOUR
SURVEYOR II	\$80.00 /HOUR
SURVEYOR III	\$100.00 /HOUR
SURVEYOR IV	\$120.00 /HOUR
SURVEYOR TECH	\$105.00 /HOUR
RPLS	\$170.00 /HOUR
CONSTRUCTION REPRESENTATIVE I	\$80.00 /HOUR
CONSTRUCTION REPRESENTATIVE II	\$110.00 /HOUR
CONSTRUCTION REPRESENTATIVE III	\$130.00 /HOUR
DESIGN TECHNICIAN I	\$60.00 /HOUR
DESIGN TECHNICIAN II	\$85.00 /HOUR
DESIGN TECHNICIAN III	\$110.00 /HOUR
DESIGN TECHNICIAN IV	\$135.00 /HOUR
ENGINEER I / II	\$115.00 /HOUR
ENGINEER III	\$130.00 /HOUR
ENGINEER IV	\$155.00 /HOUR
ENGINEER V	\$185.00 /HOUR
ENGINEER VI	\$205.00 /HOUR
ENGINEER VII	\$230.00 /HOUR
ENGINEER VIII	\$250.00 /HOUR
ENGINEER IX	\$270.00 /HOUR

REIMBURSABLE EXPENSES		
Mileage		IRS Allowable Rate
Travel and Meals		Actual Cost x 1.10
Misc. Reimbursable Expenses		Actual Cost x 1.10

OUTSIDE CONSULTANT RATES		
Associate Engineer	Civil, Electrical, Env	up to \$225.00/HOUR
Subconsultants		Actual Cost x 1.10

Schaumburg & Polk, Inc. furnishes General Liability Insurance, Professional Liability Insurance and State of Texas mandatory limits of Worker's Compensation insurance.

Preparation for and furnishing expert witness testimony will be billed at three times the hourly rates shown above for the various classifications.

Rates Effective: January 1, 2022 (*adjusted annually*)